State of Illinois) Before the Industrial Commission
County of Cook SS) of Illinois

Naomi Treece,	)	
Petitioner	)	
v.	)	No. 81 WC 595
	)	
Lyons Township High School	)	
	)	
Respondent.	)	

DECISION OF ARBITRATOR

An Application for Adjustment of Claim was filed in this matter and notice of hearing mailed to each party. The matter was heard by an Arbitrator designated by the Commission, in the City of Chicago, said County and State, on February 25, 1985 and May 29, 1985.

After hearing the proofs and allegations of the parties and having made careful inquiry in this matter the Arbitrator concludes:

On November 17, 1980, the Respondent, Lyons Township High School, was operating under and subject to the provisions of the Illinois Workers' Compensation Act; on this date the relationship of employee and employer existed between the Petitioner, Naomi Treece, and said Respondent; on the above mentioned date the Petitioner sustained accidental injuries which arose out of and in the course of the employment by the Respondent; timely notice of this accident was given the Respondent.

The earnings of the Petitioner during the year next preceding the injury were $15,450.33 and that the average weekly wage was $297.12.

Petitioner at time of injury was 41 years of age, married and had no children under 18 years of age.

Necessary first aid, medical, surgical and hospital services have partially been provided by the Respondent herein.

Petitioner is entitled to have and receive from Respondent the sum of $198.08 per week for a period of 103-3/7 weeks, that being the period of temporary total incapacity for work, for which compensation is payable.

The sum of $31,552.34 has been paid on account of this injury.

The Arbitrator renders findings of the following disputed issues:

Reasonableness or necessity of medical, surgical or hospital bills or services;

Amount of compensation due for temporary total disability;

Nature and extent of the injury;

Whether penalties should be imposed upon Respondent;

Whether Petitioner's present condition of ill-being is causally related to the injury;

The Arbitrator makes the following finding on the issue of the reasonableness or necessity of medical, surgical or hospital bills or service:

Petitioner is a 41 year old female custodian, who was struck on the left side of the head by a small speaker that allegedly fell from a wall, on November 17, 1980. Petitioner drove herself to the emergency room at LaGrange Community Hospital where she reported to the doctor there was "no loss of consciousness, only 'saw starts'." There was no laceration, bleeding or edema. The emergency room treatment was rendered at 1 a.m. She went home and returned at 1:20 p.m. where Dr. Young's subsequent physical exam revealed "an obese white female who is acutely ill with complaint of headache and tenderness over the scalp with some nausea but no vomiting (emphasis added). Examination of the head by close scrutiny does not reveal any laceration or real evidence of injury except the local spot tenderness in the left partial (sic) area." The x-ray and CT head scan were normal. His impression was that of "probably mild cerebral concussion."

Petitioner refused to take a CT scan, then agreed to take one, then became annoyed because she wasn't being "treated properly". She then had herself transferred to the University of Chicago Hospital under the care and treatment of Dr. John Mullan, Head of the Department of Neurosurgery, who had previously performed surgery on her brother-in-law (February 5, 1981, Trans. page 17).

Petitioner was admitted November 21, 1980. She told the doctor, among other things, that she had vomited "all week long", and she couldn't remember if she lost consciousness when hit on the head. On November 23, 1980, she called the nurse and reported for a "second lost her vision." Petitioner also reported she had amesis of gastric contents" in the bathroom, and was then instructed by the nurse to use amesis basin so that the contents could be checked for blood. A second CT Scan on November 21, 1980 was read normal.

A third CT Scan on November 25, 1980, was also normal. (February 9, 1981, Trans., Petitioner's Exhibit #6). She was discharged one day later.

In the February 9, 1981 transcript (Petitioner's Exhibit #7, page 13), Dr. Mullan testified that in March, 1981, a fourth CT Scan was negative, but a subsequent "EEG showed an epileptic focus in the left central parietal region of her brain." He ordered a blood flow study for April 30, 1981, which apparently was normal. Dr. Mullan admitted further that one could take an EEG three days in a row and get incompatible results each day. (February 9, 1981, Trans., Petitioner's Exhibit #7, page 25).

On July 16, 1981, another EEG was performed which was read as normal (February 9, 1981, Trans. Petitioner's Exhibit #7, page 20). An EEG taken September 8, 1984, by Dr. Glista was read as normal (Respondent's Exhibit A).

On February 24, 1981, a 19(b) decision favorable to the Petitioner was entered and filed with the Industrial Commission. She was awarded 9-3/7 weeks temporary total disability for the period November 17, 1980 to January 22, 1981. A second 19(b) decision also favorable to the Petitioner, was filed on

December 30, 1981, with the Industrial Commission. Temporary total disability was awarded from January 22, 1981 to July 9, 1981, for 24 weeks. Respondent filed a review of this decision and then dismissed its review on June 17, 1982.

It should be noted that this case was reassigned to a second Arbitrator after the 19(b) hearings because the first Arbitrator became a Commissioner. The second Arbitrator then held a permanency hearing on February 25, 1985. This Arbitrator then became a Commissioner, and the file was re-assigned to the original Arbitrator. That Arbitrator took a leave-of-absence and the file was assigned to this respective Arbitrator. (This file is further complicated by the fact that Respondent substituted new attorneys after the second 19(b) decision).

The Arbitrator makes the following finding on the issue of the amount of compensation due for temporary total disability:

Dr. Mullan testified she encouraged the Petitioner to return to work on November 11, 1982. (Joint Exhibit #1, page 5-7). He felt a post concussion syndrome would normally resolve itself in two years. (February 9, 1981, Trans., Petitioner's Exhibit #7, page 22, Joint Exhibit #1, page 27.) The Arbitrator finds the Petitioner is entitled to temporary total disability from July 10, 1981 to November 11, 1982, for a total of 70 weeks. The Petitioner is therefore owed 103-3/7 weeks temporary total disability or $20,487.41. She has been paid $31,552.34, so she therefore owes the Respondent $11,064.93.

The Arbitrator makes the following findings on the issues of whether timely notice was given and whether the Petitioner's condition of ill-being is causally related to the injury:

With regard to the neurological problem, the question which has to be asked, and which was never raised, is, how many normal EEG's does one need before he or she is found to be normal? Petitioner had at least 4 normal EEG's. This is what prompted Dr. Mullan to refer the Petitioner to Mrs. Mary T. Weed, a registered psychologist with a Master's degree, for testing. He was particularly interested in documenting some sort or organic brain damage, but Mrs. Week's investigation, testing and

testimony failed to do that. Instead, her testimony buttressed Respondent's witnesses' observations that she was intentionally doing poorly on the tests. (Petitioner's Exhibit #B), psychological and vocational testing report, pages 4, 5), and that there was a strong possibility of malingering for secondary gain. (See also, Petitioner's Group Exhibit #5, page 20). They also concluded there was no organic brain damage (Petitioner's Exhibit #B, Psychological Consultation, November 4, 1982, page 1).

The foregoing observations raises the issues of Petitioner's credibility. There are three other readily apparent inconsistencies which cast the Petitioner in a strange light.

First we have the un-witnessed "accident". If the speaker fell from any elevated height or with any speed, one would have found a laceration, or bleeding or edema. The doctor's close observation failed to reveal any of these factors. "Examination of the head by close scrutiny does not reveal any laceration or real evidence of injury except the local spot tenderness in the left parietal area" (February 9, 1981, Trans., Exhibit #5, page 3)

Second, the Petitioner testified to "daily vomiting" as part of her symptomatology. (February 9, 1981, Transcript, page 14, February 25, 1985, Trans., page 78). Her attorney included this factor (i.e. daily vomiting) in his hypothetical to Mrs. Weed (February 9, 1981, Trans., page 62) the psychologist.

Dr. N. Young in his notes of November 17, 1980, specifically denies any vomiting (February 9, 1981, Trans., Exhibit #5, page 3). The entire medical record fails to corroborate Petitioner's complaints of "daily vomiting". Nurses are always instructed to document this in their "nurses notes". There is one entry dated November 23, 1980 (February 9, 1981, Trans., Petitioner's Exhibit #6, pages 7-8) by a nurse that Petitioner reported "amesis of gastric contents" after having a "diet breakfast and lunch" —but after Petitioner was instructed to save her "emesis" for examination, she stopped vomiting.

Contrast this with her admission to Dr. Neely of the University of Chicago Hospital on October 6, 1983, that she "sometimes eats like a maniac and occasionally makes herself throw up: (emphasis added) (Petitioner's Group Exhibit #5, page 3), and the fact she has gained 100 pounds in 2-1/2 years (Supra., page 14)

Finally, we have Arbitrator Green's observation in the record (February 9, 1981, Trans., page 79) with Mrs. Weed's observations of the Petitioner. Arbitrator Green recalled that "she responded to questions, testified logically, lucidly as to the accident....and she had no trouble expressing herself...she was able to recall the details of her accident clearly, recall the actions she took following the accident clearly and gave a good account of the things...." Mrs. Weed's test results were dramatically opposed to Arbitrator Green's observations. Why would she respond straightforward and approximately in one situation, and noncomplying and inappropriately in the other?

There is no question the Petitioner has psychological problems. The record establishes a major depressive disorder, suicidal ideations, over-eating, hypersomviolence, narcolepsy, and loss of interest in sex. The issue, then, is whether or not the alleged trauma aggravated or exacerbated her psychological condition. The Arbitrator finds there is no credible psychological testimony to support such a finding. One of the psychologists opined that the signs and symptoms Ms. Treece was exhibiting could have been the side affects of Inderal (Petitioner's Exhibit #3, page 2). Dr. Mullan admitted he was not qualified to render a psychological opinion (Joint Exhibit #1, page 21). Mrs. Weed stated unequivocally the Petitioner's neurosis was "non compliance" (February 9, 1981, Trans., page 73), which she exhibited throughout her tests.

The Petitioner's last stab at establishing causal connection was Dr. Marvin Ziporyn, who psychiatric testimony clearly lacked credibility. He was impeaching Petitioner's own witness. Mrs. Weed, who had personal interaction with the Petitioner, whereas, he did not. In addition, the hypothetical posed to him makes no mention of the number of normal EEG's. Finally he is assuming "severe initial damage to the cranial contents"

(April 9, 1985, Trans., page 25a) while the record is clearly in opposition. He may be an expert on Richard Speck but he clearly is a novice when it comes to Mrs. Naomi Treece.

The Arbitrator further finds Dr. Glista's testimony regarding the lack of causal connection to be highly credible (February 25, 1985, Trans., pages 119-122).

The Arbitrator makes the following finding on the issue of the reasonableness or necessity of medical, surgical or hospital bills or service:

The Arbitrator finds that the medical bills incurred after November 11, 1982, were not reasonably related to the incident in question, and therefore, not compensable.

The Arbitrator makes the following finding on the issue of whether penalties should be imposed upon Respondent:

The issue of penalties has been rendered moot by the foregoing conclusions.

The Arbitrator finds:

Petitioner failed to prove that any permanent disability was sustained on account of the aforesaid accident for which compensation is payable, as provided by Statute.

Claim for Compensation, therefore, is denied.

Petitioner is now entitled to receive from Respondent compensation that has accrued from November 17, 1980 through April 9, 1985 and the remainder, if any, of the award to be paid to petitioner by Respondent in weekly payments.

You are further notified that unless a Petition for Review is filed with the Industrial Commission within fifteen (15) days after receipt of this decision, and a Review perfected in accordance with the Worker's Compensation Act and the Rules of the Industrial Commission, then the Decision of the Arbitrator shall be entered as the decision of the Industrial Commission. Subject to §19(n) of

the Illinois Workers' Compensation Act, the interest rate for purposes of an appeal in this case is 6.13%. However, should an Employee's appeal of this case result in either no change or a decrease in this award, interest shall not further accrue from the date of such appeal.

Dated and entered June 25, 1986.

Gilberto M. Galicia,
Arbitrator

DEC/am